

DEPARTMENT OF STATE REVENUE

03-20200070R.MOD

Memorandum of Decision: 03-20200070R
Withholding Tax
For The Tax Year 2000

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Company timely filed a claim for refund and is entitled to a refund of withholding taxes paid, but was not entitled to a refund for collection fees.

ISSUE

I. Withholding Tax - Statute of Limitations.

Authority: IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of its refund claim.

STATEMENT OF FACTS

Taxpayer is an Ohio based company that does business in Indiana. The Indiana Department of Revenue ("Department") denied Taxpayer's claim for refund on the basis that it filed the claim for refund beyond the three year period required by statute. Taxpayer protested the denial, the Department held an administrative hearing, and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Withholding Tax - Statute of Limitations.

DISCUSSION

Taxpayer failed to file its tax return in 2000, resulting in the Department filing the returns on Taxpayer's behalf. The Department determined that Taxpayer owed withholding tax for the year at issue and issued a proposed assessment in August 2018. The Department issued a Demand Notice for Payment to Taxpayer in November 2018. In January 2019, both a Clerk Warrant and Collection Agency Warrant were issued. In February 2019 the Department's collection agency issued a Notice of Levy to Taxpayer's bank. Taxpayer received a letter from its bank notifying it that the bank received the Notice of Levy and the funds would be remitted in April 2019. Taxpayer contacted the Department in March 2019. The Department's collection agency levied the assessed withholding amount and a collection fee from Taxpayer's bank account on April 5, 2019. Taxpayer filed a claim for refund contending that it had overpaid when the Department's collection agency levied the assessed withholding amount.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-8.1-8-4 provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

- (b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.
- (c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

The Department is therefore authorized to employ a collection agency to collect a debt arising from a tax warrant.

The Indiana Code provides guidance on filing a refund claim. IC § 6-8.1-9-1(a) provides:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment. . .

The Department denied Taxpayer's claim for refund stating, "Tax year 2000 is out of the statute of limitations. The claim for refund was not filed within the time period required by law. . ." Under IC § 6-8.1-9-1(a) a claim for refund must be filed three years from the later of the due date of the return or the date of payment. Taxpayer's three year period began to toll when the collection agency levied the assessed withholding amount on April 5, 2019, the date of payment. The three year period for Taxpayer to file a claim for refund extends until April 5, 2022. Since the Department's records indicate that Taxpayer's status is "Overpaid" and since Taxpayer was well within the three year limit to file a refund claim under IC § 6-8.1-9-1(a), and Taxpayer is entitled to a refund for the assessment of withholding tax. However, Taxpayer is not entitled to a refund on the collection fees levied. Taxpayer did not contact the Department in a timely manner to halt the collection agency. The collection agency carried out its duties and is entitled to its collection fees, as provided by IC § 6-8.1-8-4. Thus, Taxpayer will receive its requested refund less collection fees.

FINDING

Taxpayer is sustained in part and denied in part.

May 5, 2020

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